

Brown & Root Braun and International Association of Bridge, Structural and Ornamental Iron Workers, Local 433, AFL-CIO. Case 21-RC-18989

March 9, 1993

ORDER DENYING REVIEW

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Petitioner's request for review of the Regional Director's Decision and Order (pertinent portions are attached). The request for review is denied as it raises no substantial issues warranting review.

APPENDIX

REGIONAL DIRECTORS DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, the I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) of the Act, for the following reasons:

Petitioner seeks to represent a unit of employees, as amended at the hearing, comprised of all full-time and regular part-time construction ironworkers, including structural ironworkers, structural welders, riggers and iron worker helpers, employed by the Employer in its structural rigging department at the ARCO Refinery facility in Carson, California; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

If the petitioned-for unit is not found appropriate, in the alternative, Petitioner would proceed to an election in a unit composed of all employees in the rigging/structural department. Petitioner contends that the structural rigging department is composed only of structural ironworkers, structural welders, riggers, ironworker helpers and operators. The Employer, however, submits that its structural rigging department is composed of structural ironworkers, structural welders, riggers, ironworker helpers, operators, millwrights and mechanics. The Petitioner would not participate in an election if it is concluded that the structural rigging department includes the millwrights and mechanics.

The Employer further argues that both of the proposed units submitted by Petitioner are inappropriate for the purposes of collective bargaining, and that the only appropriate

unit is a unit composed of all hourly direct-cost employees. Thus, the Employer avers that the instant petition should be dismissed. The Employer also argues that if either of the Petitioner's units is found appropriate, the petition should still be dismissed because there is presently not a substantial and representative complement of employees employed in light of the Employer's cyclical business. Finally, the Petitioner argues that if an election is directed, eligibility to vote should be established pursuant to the Board's *Daniel's*³ formula, while the Employer contends that the formula is not appropriate. The Employer is a Delaware corporation engaged in the engineering and construction industry, with operations all over the world. Among its varied operations, the Employer contracts with customers for the construction and/or modification of petroleum refineries. The instant petition concerns those employees of the Employer employed at the Atlantic Richfield Company Refinery in Carson, California (hereinafter called the ARCO refinery). The parties stipulated that there has been no history of collective-bargaining among the unit of petitioned-for employees.

The record reveals that at the ARCO refinery, the Employer has been contracted to perform the work of installing new structures and systems, as well as modifying existing systems. The record also reveals that the Employer has had a long history of contracts with the Atlantic Richfield Company to perform work at the Carson refinery. Since the work performed by the Employer for the Atlantic Richfield Company is in fulfillment of specific contracts, the work force at the ARCO refinery varies. Thus, the record demonstrates that in around October 1990, the Employer completed a construction contract at the ARCO refinery which resulted in a complete cessation of operations by the Employer's construction department. Thereafter, pursuant to new contracts, the Employer began anew work at the ARCO refinery around June or July, 1991. The work force which is the subject of the instant petition is part of the work force hired under the present contracts between the Employer and ARCO. According to the Employer's projections, its present contracts will require it to maintain a construction work crew at the ARCO refinery through at least June 1993. The record reveals that the work performed by the Employer is subject to various peaks and valleys which results in periodic layoffs and new hiring as different aspects of the contracts are completed.

In charge of the Employer's work at the ARCO refinery is its project construction manager, P. Pribyl. Below Pribyl is an assistant project manager, Marvin Rogers, who generally oversees all construction activities that take place at the ARCO refinery jobsite.⁴ Below Rogers, the Employer has divided the ARCO refinery jobsite into two geographic areas: the north end and the south end. Work is performed by employees which are the subject of the instant petition, in both ends of the ARCO refinery jobsite. The north end is under the direction of General Superintendent Dale Sparks and the south end is under the direction of General Superintendent Gene Gotcher.

Under Sparks and Gotcher, the Employer has organized its operation into five departments, each headed by a super-

³*Daniel's Construction Co.*, 167 NLRB 1078 (1967), as modified by *S. K. Whitty & Co.*, 304 NLRB 776 (1991).

⁴The record reveals that the ARCO jobsite occupies an area which is approximately 2 square miles.

intendent. Thus, the five departments are the building department, headed by Superintendent Vic DeSautel; the electrical/instrumentation department, headed by Superintendent Robert Wall; the rigging/structural department, headed by Superintendent Vernon Wiggins; the pipe department, headed by Superintendent Butch Todd; and the millwrights/boiler-maker department, also headed by Superintendent Vernon Wiggins.⁵

Below each of the above-noted departmental superintendents, the Employer utilizes foremen who oversee the daily work of the construction employees.⁶ The record reflects that all of the construction employees maintain the same work schedule, starting work at 6:30 a.m. and ending work at 3 p.m. Prior to the 6:30 a.m. starting time, assistant project manager Rogers conducts a meeting for all of the departmental superintendents and the general superintendents. At that time, progress on the contracts is assessed and the daily "game plan" is reviewed. Thereafter, the superintendents meet with the foremen and in turn, the foremen meet with the employees assigned to their crews. It is at these meetings between the foremen and the crews that the day's work is reviewed and specific job assignments are made. The record also reveals that all construction workers receive the same break and lunch periods, and that all employees take their breaks and lunch periods at the same time. According to employee witnesses, the breaks and lunches are taken wherever the work is taking place. According to these same witnesses, the work performed by the crews is done in close proximity to the other crews and as a result, there is regular and frequent contact among the various departmental crews both during worktime and during the breaks and lunch periods.

The record discloses that as of the week ending January 24, 1992 (which was described as a period where peak employment was experienced by the Employer), each department employed the following numbers and classifications of employees:⁷

The rigging/structural department employed 1 mechanic and 3 mechanics' helpers; 3 millwrights and 2 millwrights' helpers; 15 operators and 8 rig operators; 12 riggers; 10 structural ironworkers and 12 structural iron worker's helpers; and 13 structural iron welders. The building department

employed 59 laborers, 25 carpenters and 18 carpenters' helpers; 6 cement finishers and 3 cement finishers' helpers; 5 rebar ironworkers (also known as reinforcement ironworkers) and 5 re-bar ironworkers' helpers; 2 painters and 2 painters' helpers; 11 insulators and 12 insulators' helpers; and scaffold builders.

The pipe department employed 52 pipe fitters and 84 pipe fitters' helpers; 34 pipe welders. The electrical instrumentation department employed 15 electricians and 19 electricians' helpers; 3 instrumentation fitters and 3 instrumentation fitters' helpers; and 1 instrumentation technician. The record reveals that all electricians, instrument fitters, insulators, structural ironworkers, mechanics, millwrights, pipefitters, plumbers, riggers, and pipe welders are paid from \$14.10 to \$16.50 per hour. Carpenters, cement finishers, reinforcing ironworkers and structural welders, are paid from \$14.10 to \$16.25 per hour. Painters are paid from \$14.10 to \$16 per hour. Instrument technicians are paid from \$14.75 to \$20.50 per hour. Operators are paid from \$8.75 to \$16.50 per hour. Laborers are paid from \$6.70 to \$13.45 per hour. Instrument technicians are paid from \$14 to \$16.50 per hour.

In addition, the record reveals that among the above-noted "helper" positions, the Employer maintains a grade III, a grade II, and a grade I position. Thus, grade III helpers, depending on the department in which they work, are paid up to \$9.10 per hour; grade II helpers are paid from \$9 to \$11.55 per hour; and grade I helpers are paid from \$11.45 to \$14.05 per hour.

The record reveals that the grade III helper position is an entry level position in each of the classifications of employment which utilize helper positions. Further, the record reveals that no prior experience is required in order to attain the position of helper grade III, and that in its history, the Employer has transferred laborers who have displayed initiative to helper positions and that there have been instances of employees progressing from a helper position up to a journeyman position.

The record, however, does not disclose whether the Employer utilizes any sort of formal apprenticeship program or system that would establish a definite line of progression from the helper position up to a journeyman position. To the contrary, the record appears to reveal that the Employer does not have a formal system, and that it makes its decisions regarding the progression of workers from one level to another, based on its individual assessment of each worker.

Because the helper classifications are primarily unskilled classifications, the record reveals that the Employer has regularly and frequently interchanged helper employees among its various departments. Thus, the record reveals that when work diminishes in a particular department, the Employer will frequently reassign the helpers to another department where more work is available.

The record discloses that all employees are subject to the same hiring procedures. Thus, all employees (including those that have worked for the Employer on prior occasions), are required to fill out an employment application. Thereafter, all newly hired employees are required to go through the same safety training. At the time of hire, the Employer gives to all employees a copy of its employee protection policy which sets forth the Employer's safety policies at the jobsite.

With regard to qualification requirements, the record reveals that pipe welders are required by ARCO to possess

⁵ The record reveals that previously, the millwrights/boilermaker department was headed by Superintendent Bill Holmes. Around March 1992, Holmes resigned. Instead of hiring a new superintendent, the Employer shifted the supervision of the millwrights/boilermakers department, to the rigging/structural department under Wiggins. The record further reveals that the Employer does not employ any boilermakers at the ARCO refinery jobsite.

There was no evidence presented with regard to the permanency of the change in supervision of the millwrights/boilermaker department employees. It appears, however, that in light of the expectation that this job will last only until around June 1993, the realignment of the departments is permanent.

⁶ At the hearing, the parties stipulated that the foremen have the authority to effectively recommend the hiring and firing of workers and that they are supervisors within the meaning of the Act.

⁷ The record does not reveal the number of employees employed as of the date of the hearing. The classifications noted reflect the elimination of the millwrights/boilermaker department, and the placement of those employees in the rigging/structural department. The record reveals that employees in each department, and/or classification within each department, wear hard hats that are colored according to their classification.

county of Los Angeles certification, and that all other welders are required to pass the Employer's certification test. No other classifications are required to possess any type of official certification. The record reveals that the Employer determines whether an applicant is qualified to fill the position based on his list of prior experience. In addition, the personnel employees who perform the initial applicant screening may ask additional questions to determine the applicant's qualifications for the job in question.

As is noted above, all construction employees are paid on an hourly basis and all are subject to the same timecard procedures and rules. The record reveals that all construction employees receive the same health and welfare benefits;⁸ all construction employees work the same hourly schedule; all construction employees park in the same parking lot; all construction employees have the same absence policy applied to them; all construction employees are subject to the same safety rules and regulations; all construction employees have the same grooming requirements applied to them (which prohibit hair longer than shoulder length, which permit mustaches only to the lip line, and which do not permit beards); all employees are subject to the same clothing rules (with the exception of iron worker welders and pipefitter welders who are permitted to walk with their shirt tails out, whereas all other construction employees are required to keep their shirt tails tucked in); and all employees are subject to the same emergency medical procedures as well as the same hazard communication policy.

The Employer utilizes the classification of "iron worker" to cover structural ironworkers and re-bar ironworkers. As of the time of the hearing, there were only four structural ironworkers employed at the ARCO jobsite. As is noted above, the Employer has placed the structural ironworkers in the structural/rigging department. This department, as is also noted above, also has the structural iron welders, the riggers, the operators, the millwrights, and the mechanics.

Because the Employer's operation at the ARCO jobsite varies, depending on the stage of completion of the contract undertaken, the work duties of the structural ironworkers vary. As an example, the record discloses that at the beginning of the present contract, the Employer utilized structural ironworkers to perform the task of erecting fencing around various areas at the jobsite. At the peak employment period of the present contract, the record reveals that the structural ironworkers mainly worked erecting pipe supports and stairways and structures. As of the date of the hearing, the structural ironworkers were erecting platforms.

The record reveals that in performing their work, the structural ironworkers will be on a regular basis, in close contact with the pipefitters. Thus, the structures that are being erected by the structural ironworkers are intended, in part, as supports for the pipe that is being laid and connected by the pipefitters. In addition, the record reveals that in performing their work, the structural ironworkers will also come into close contact with pipe welders, laborers and helpers in the various departments.⁹

⁸ The record discloses that eligibility for the Employer's health and welfare benefits is based on length of time employed by the Employer. The same criteria for eligibility is applied to all construction employees.

⁹ The record discloses that whenever a welder, either a pipe welder or a structural iron welder, performs work, the safety policies at the

In addition, the record reveals that structural ironworkers on occasion perform the same types of tasks that are performed by pipefitters. Thus, on those occasions when it is necessary to install temporary pipe supports, either the structural ironworkers or the pipefitters will be assigned to perform the tasks required. In performing this work, both classifications of employees utilize the same types of tools and equipment. The record discloses that on occasion, the structural iron welders will be assigned to work in other departments. For example, at the time of the hearing herein, structural iron welders were assigned to work in the pipefitting department.

The record established that the work performed by the structural iron welders assigned to the pipefitting department was the same type of work that is being performed by the structural iron welders assigned to the structural/rigging department.

The riggers perform the work of rigging items that are to be lifted. Thus, the riggers will perform the work wherever this task is needed. Necessarily, the riggers will work closely with structural ironworkers, with pipefitters and with the operators that operate the various cranes that perform the actual lifting function. Similarly, the operators operate machinery such as cranes and forklifts, and will work throughout the jobsite, working in close contact with and in cooperation with all of the other classifications of employees, both in the structural/rigging department and in the other departments. In addition, the record revealed that some of the operators are assigned to work in the Employer's building department's "dirt department."

The re-bar ironworkers, as is noted above, are in the building department. The record discloses that re-bar ironworkers tie re-bar which is used to reinforce poured concrete structures and supports. In performing this work, the re-bar ironworkers work closely with the carpentry employees who are constructing the concrete frames, and the concrete employees who perform the work of pouring and finishing the concrete. The record reveals that these employees, in conjunction with helpers and laborers, perform their work as a "team," all working to get the job completed. Thus, on any particular task, employees from one trade would assist the employees in another trade in light of the fact that the work performed by each trade is necessary for the completion of the overall task assigned.

The Employer's timekeeping and cost paperwork is maintained to reflect the time that each employee works in a particular department. Thus, each time an employee from one department is assigned to work in another department, the Employer's records will indicate that the particular employee spent certain time working for the other department. These records are kept so as to determine the labor costs expended by each department.

The Employer's organizational structure, as described above, permits superintendents to request that employees be temporarily transferred from one department to another, depending on the work demands. Thus, the Employer's records noted above reveal that there has been regular temporary re-

ARCO jobsite require employees to perform "fire watch." Thus, the Employer utilizes helpers and on occasion, laborers, who have been trained by the Employer to perform this function. When this function is utilized, there is close and regular contact among the laborers/helpers and the welders and/or the structural ironworkers.

assignment of employees, including temporary reassignment of employees from the structural/rigging department to other departments and vice versa.

The Board has long held that units in the construction industry may be appropriate on the basis of either a craft unit (see *Dick Kelchner Excavating Co.*, 236 NLRB 1414 (1978)); or departmental unit; or so long as the requested employees are a clearly identifiable and homogeneous group with a community of interest separate and apart from other employees. *R. B. Butler Inc.*, 160 NLRB 1595 (1966); *Del Mont Construction Co.*, 150 NLRB 85 (1964).

The record presented herein fails to establish that either of the units proposed by the Petitioner constitute a craft unit. Thus, the record fails to show that the employees in either of the proposed units participated in or completed a traditional apprenticeship program or that they achieved journeyman status in the craft. The only evidence of any certifications was the requirement imposed by ARCO that pipe welders, who are not part of the petitioned-for units, be certified by the county of Los Angeles; and that structural iron welders pass a test administered by itself.

In addition, the record reveals that the Employer does not operate along strict traditional craft designations. For example, the Employer classified ironworkers to include both structural ironworkers as well as re-bar ironworkers. Also, structural iron welders are assigned to both the structural/rigging department and also to the pipefitting department. In addition, the record reveals that the Employer's operation is such that superintendents temporarily transfer employees from one department to another department. I also note that in both of the units proposed by the Petitioner, it would include employees classified as helpers. The record reveals that these employees are not part of any formal apprenticeship program and that they are unskilled and are frequently and regularly transferred from department to department, dependent on the Employer's needs. Thus, this further demonstrates that the Petitioner's proposed units do not constitute craft units. *Brown & Root, Inc.*, 258 NLRB 1002, 1003 (1981); *Longcrier Co.*, 277 NLRB 570 (1985).

The units proposed by the Petitioner also do not constitute a departmental unit. Thus, as is noted above, the Employer merged the millwrights/boilermaker department with the rigging/structural department, so that the rigging/structural department as of the date of the hearing herein is composed of structural ironworkers, structural iron welders, riggers, iron worker helpers, operators, riggers, millwrights, millwrights' helpers, mechanics and mechanics' helpers. Thus, the Petitioner's proposed units do not correspond to any departmental grouping utilized by the Employer.¹⁰

¹⁰ The Petitioner did not submit a brief in this matter. At the hearing, the Petitioner's counsel argued that the millwrights/boilermaker department was never eliminated and that they continued to wear hard hats which are a different color from those worn by the rigging/structural department employees. The Petitioner ignores, however, that the Employer transferred the overall supervision of the millwrights/boilermaker department employees to the rigging/structural department superintendent. Accordingly, following the transfer, the millwrights/boilermaker department employees were merged into the rigging/structural department. Thus, while Petitioner's counsel is correct in noting that the millwrights/boilermaker employees kept the same foremen, the record demonstrates that following the transfer, the foremen reported to the rigging/structural superintendent.

The units proposed by the Petitioner also do not constitute functionally distinct groups with common interests separate from the Employer's other skilled employees. Initially it is noted that the Petitioner's two proposed units are identical except that the unit described by the Petitioner as the rigging/structural department, includes operators, structural ironworkers, structural welders, riggers, and iron worker helpers, while the proposed unit initially sought by the Petitioner includes structural ironworkers, structural welders, riggers, and iron worker helpers, but does not include operators.

It is noted that those employees in the Petitioner's two proposed units do not perform work which is distinct from the work performed by the Employer's other employees. Thus, the record revealed that structural iron welders at times perform the same work performed by pipe welders. In addition, the two proposed units would exclude the re-bar ironworkers and the operators who are assigned to the building department. The record also revealed that at times, the structural ironworkers perform the same work that the pipefitters perform in erecting pipe supports. Moreover, the record demonstrates that while the riggers perform work alongside the structural ironworkers and the structural welders, the record also demonstrates that they also work alongside and in support of tasks performed by re-bar ironworkers, pipe fitters, and pipe welders.

The record demonstrates that in the Employer's operation at the ARCO jobsite, those employees in the Petitioner's two proposed units work alongside all other classifications of employees on a regular and frequent basis. Thus, the record demonstrates that structural ironworkers may work alongside pipe fitters and pipe welders, and that riggers (as noted above) regularly work alongside pipe fitters, pipe welders, and operators.

I also note that the employees in the Petitioner's two proposed units are not separately supervised. Thus, the millwrights and mechanics enjoy the same supervision as those employees in the proposed units. In addition, I note that the helpers in the Petitioner's two proposed units are regularly re assigned to other departments depending on the Employer's operational needs.

Moreover, the record is replete with examples of commonality in the terms and conditions of employees in *all* classifications, including those in the Petitioner's proposed units, as well as those classifications that it would exclude from either unit. Thus, all employees are paid on an hourly basis; all employees in skilled classifications are paid similar wage rates; all construction employees work the same hours and take the same break and lunch times; all employees enjoy close and regular contact with other employees, without regard to their departmental classification, both during worktime and during lunch and breaktimes; all employees are eligible for the same health and welfare benefits; all employees are subject to the same timekeeping procedures; and all employees are subject to the same hair, dress, attendance, parking, conduct, and safety rules and regulations.

Under these circumstances, I conclude that the record presented herein is insufficient to establish that the employees in either of the two units proposed by the Petitioner perform work that is distinct from the Employer's other skilled employees so as to constitute in either case an appropriate unit for the purposes of collective bargaining. *Brown & Root*,

Inc., supra; *Longcrier Co.*, supra; *Atlanta Division of S. J. Groves & Sons Co.*, 267 NLRB 175 (1983).

As was the case in *Atlanta Division of S. J. Groves*, in the present case, the Petitioner seeks to represent various classifications of employees in arbitrary groupings which do not meet the Board's standards for appropriate collective-bargaining units. Accordingly, based on the record presented herein, I am unable to find that the groupings sought by the Petitioner, in either of the proposed units, constitutes an appropriate unit. Accordingly, I shall dismiss the instant petition.¹¹

¹¹ Based on this conclusion, and the Petitioner's position that it would not participate in an election in a unit other than the one it

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

seeks herein, I find it unnecessary to determine whether the only unit appropriate is a unit composed of all hourly construction employees, as proposed by the Employer. Moreover, in light of the action dismissing the petition herein, I find it unnecessary to determine whether an election is appropriate at this time, or to determine the appropriate eligibility formula.